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Stellenbosch University

**STUDENT COURT
OF STELLENBOSCH UNIVERSITY**

REPUBLIC OF SOUTH AFRICA

In the ex parte application of:

AMBER NIEUWENHEYZEN

First Applicant

and

LIYEMA JACOBS

Second Applicant

Neutral Citation: *Ex Parte Nieuwenheyzzen and Another (Structural Interdict)*
02/24

Decided on: 19 February 2025

STRUCTURAL INTERDICT

RISIMATI CJ

[1] The Applicants approached this Court on an urgent basis on 10 February 2025. In their application, the Applicants sought an order for the appointment of an Interim Electoral Commissioner to facilitate and oversee the election of the Chairperson of the Students' Representative Council (SRC) which would confirm the replacement of an interim SRC with a duly elected SRC in terms of S28 of the Statute of Stellenbosch University 2019.

Urgency

[2] The Applicants requested that the Court dispense with the forms and services set out in the Rules of Procedure, 2024 in conducting a hearing for the next court day due to the urgency of the matter presented. The onus rests on the Applicants to prove that their application is urgent.¹ As elucidated by the Court in *Ex parte Mhlongo and Another*, a matter is deemed urgent where, should relief not be granted expeditiously, undue prejudice or injustice will occur.² The Court must balance the need for urgent relief with the duty to administer justice appropriately.

[3] The Court appreciates the urgency of the eminent conclusion of the Interim SRC term and its potential to create a leadership vacuum. However, considering the interests of justice, the Court did not consider it appropriate to grant the requested relief without hearing further representations from the Applicant in terms of the Rules of Procedure, 2024. This matter was accepted as being urgent, but to a lesser degree than averred by the Applicant. It was placed on the roll as an *ex parte* application for an open court hearing on 17 February 2025.

The merits

[4] Pursuant to Rule 22 of the Rules of Procedure, 2024, the Applicants were duly consulted, and a hearing was conducted on 17 February 2025. The Applicants were granted the opportunity to make oral representations and to address concerns expressed by the Court pertaining to matters related to and consequential to the application before the Court.

[5] Whilst the Applicants provided crucial information during the hearing that would assist the Court in determining the matter, the information supplied did not wholly substantiate the claims brought forth by the Applicants. The Applicants asserted that the judgement laid down by the Appeals Court in *Le Roux v Februarie and Another* is a representation of the status quo and that the elections, which led to the establishment of an interim SRC, are no longer contested and are thus deemed to be free and fair. This assertion is made in spite of pending High Court litigation that may have a substantial impact on the validity of the order made in *Le Roux v Februarie and*

¹ Rule 8(1) of the Rules of Procedure 2024.

² 08/05/24.

Another. In addition, the Applicants asserted the intention to conduct a bi-election to ensure the finalisation of the SRC.

[6] As this matter may set a far-reaching precedent that will be binding on all future interim SRCs and related processes, the Court did not find itself in a position to adequately adjudicate on the matter based on the information and documentation submitted by the Applicants. To quell this hindrance, the Court requested during the hearing that the applicants submit written affidavits substantiating claims made by them during the hearing; namely, that the pending High Court application made by Miss Le Roux following her disqualification is not an appeal of *Februarie v Electoral Commission and Another*,³ and is unrelated to the current matter; and that a bi-election is a legitimate mechanism to ensure the finalisation of the SRC.

[7] Following the annual SRC elections, an SRC chairperson must be elected under the auspices of one electoral commissioner, as per section 19(2). The disqualification of Ms Le Roux, which has culminated in various orders, appeals and now a High Court application, delayed the finalisation of the electoral process to such an extent that the Electoral Commission's ("EC's") term has since come to an end. This hinders the appointment of an SRC chairperson.

[8] Due to the nature of the delays, the EC's and interim SRC's leadership terms have since come to an end, resulting in a leadership vacuum. The Applicants are requesting that the court confirm the appointment of an Interim Electoral Commissioner, which is not a position that exists in the current institutional framework and would require rigorous justification and considerations of its impact and implications.

[9] Due to the sensitive nature of these proceedings and the far-reaching effects it may have on future interim SRC structures, this Court has elected to exercise its jurisdiction in terms of section 85(1) of the Student Constitution, 2021, and issue a structural interdict on the terms specified in its order.

³ 05/10/24.

Order

The Court therefore makes the following order:

- [1] The matter is urgent but not to the degree asserted by the Applicants.
- [2] The Applicants are interdicted from appointing an Interim Electoral Commissioner and electing an SRC Chairperson pending a final judgement issued by this Court.
- [3] The Applicants are required to furnish the Court with further documentary representations (preferably in the form of affidavits) to substantiate the claims that pending High Court application is unrelated to a claim that the elections were not free and fair and thus, that there exists no legal litigational obstacle to the finalisation of the SRC.
- [4] The Applicants are required to furnish the Court with a documentary account, preferably in the form of an affidavit, of the process through which the proposed Interim Electoral Commissioner was selected and whether this was done in a manner that was fair, just, and avoided conflicts of interests.



RISIMATI CJ



MÜLKE DCJ

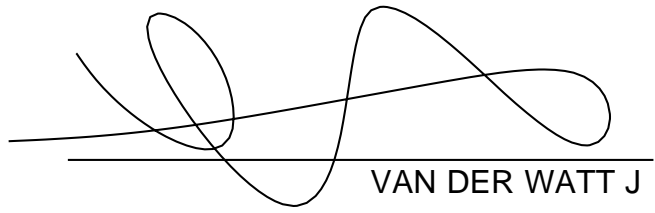


ZIMRI J



LAKER J

RISIMATI CJ



VAN DER WATT J